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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06

SPONSOR McSorely LAST UPDATED _____ HB _____

SHORT TITLE Payday Loan Fees and Regulation SB 548

ANALYST McSherry

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	225.0	225.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Senate Bill 448 relates to and conflicts with Senate Bills 548, 475, and 636 and House Bill 409.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0-\$55.2	\$0-\$55.2	\$0-\$110.4	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts
Regulations and Licensing Department

SUMMARY

Synopsis of Bill

Senate Bill 548 "Payday Loan Fees and Regulation," proposes to amend the NM Small Loan Act of 1955 by:

- Defining payday loans (Page 3 line 12 through page 4 line 9) as:
 - "A loan in which the licensee negotiates a personal check tendered by the consumer and agrees in writing to defer presentment of the check until the con-

sumer's next payday or another date agreed to by the licensee and the consumer" including:

- any money advance or credit arrangement or extension of credit for which the licensee accepts "dated instrument" or authorization signed by a consumer for transfer or withdrawal of funds for purpose of repaying a payday loan or agrees to hold a dated instrument prior to negotiating or depositing, or pays the consumer, or another person the amount to the instrument actually paid in exchange for a fee finance charge or other consideration.

And excluding:

- overdraft products and services offered by banking corporations, savings and loan association or credit union and installment loans
- Increasing the original license fee from five hundred dollars \$500 to seven hundred and fifty dollars \$750 (Page 9 lines 17 and 18).
- Increasing the renewal license fee from five hundred dollars \$500 to seven hundred and fifty dollars \$750 (Page 12 lines 17 and 18).
- Increasing the annual examination fee from two hundred dollars (\$200) to four hundred dollars \$400 (Page 13 lines 21 and 22).
- Increasing the amounts of penalties for the violation of the NM Small Loans Act from not less than \$100 and not more than \$300, to not less than \$500 and not more than \$1000 or by imprisonment of 6 months rather than 90 days (Page 28).
- Adding a section to the Small Loan Act regarding requirements for payday loans. Some of the requirements are that a licensee cannot make a loan to a consumer with outstanding payday loans exceeding \$1,000.00 or twenty five percent of the consumer's gross monthly income, whichever is less, limits the consumer to 1 outstanding payday loan, payday loans must have a minimum of 3 payments and a month between each payment, rebate of fees to a consumer based on the actuarial method if paid off early, and the right to rescind the payday loan transaction (Page 28 line 12 through page 31 line 3).
- Capping the maximum fee amount that a payday lender can charge. For the first \$300.00 the lender may charge \$17.00 per \$100.00, \$15.00 per additional \$100.00 up to \$500.00, and an additional \$13.00 per hundred up to \$1,000.00. The lender can only charge one \$15.00 fee for insufficient funds to pay the payday loan (Page 31 line 6 through page 32 line 23).
- Adding a section to the Small Loan Act regarding prohibited practices when a small loan licensee makes payday type loans. Some of the prohibited practices addressed in the section would be that the licensee cannot use the criminal process to collect on a payday loan, the licensee cannot charge a fee to cash a check representing the proceeds of a payday loan and the licensee cannot have more than one payday loan to a consumer at a time for all licenses operated under the same trade name. Agency or partnership agreements are prohibited if they are used as a scheme or contrivance to circumvent the Act. The new section also addresses additional consumer protections (Page 33 line 1 through page 36 line 12)
- Prohibiting the operation of a payday loan business where the licensed premises would be within one and one-half miles of a gambling facility (Page 36 line 13 through page 37 line 3).

- Requiring the Director of the Financial Institutions Division to certify a commercially reasonable method of verification to be used by payday lenders in order for them to meet the requirements of the bill regarding payday loans (Page 37 line 15 through page 40 line 14).
- Requiring the Division to collect data and compile an annual report by April 1 of each year (Page 40 line 17 through page 42 line 20).
- Adding additional protections for military members who enter into a payday loan agreement. The licensee can no longer garnish the wages or salaries of a consumer who is a member of the military or contact the military chain of command of a consumer who is a member of the military in an effort to collect on a payday loan (Page 42 line 23 through page 43 line 10).
- Require additional disclosures on a payday loan document (Page 43 lines 13 through 23).
- Requiring the director to establish and implement rules that create incentives for banking institutions to offer small loan products that meet the needs of low to moderate-income borrowers (Page 45 lines 5 through 8)
- Making the effective date of the provisions of the bill is October 1, 2006 (Page 45 lines 18 and 19).

FISCAL IMPLICATIONS

Increases in revenue were estimated by assuming that renewal licenses may decrease to 600 from 700 due to the licensure increases and additional constraints provided in the proposed act.

The renewal license fee increase from \$500.00 to \$750.00 for renewals would result in an additional \$250 made for each license. 100 less renewals than a typical year would decrease revenues by \$25,000. The increase in examination fees from \$200.00 to \$400.00 and estimated for 600 licenses would result in an additional \$200/license and an absolute loss of 100 licensees, decreasing revenues by \$20,000.

Small Loan Company License Renewals estimated at 600	\$150,000.00
Reduced by fewer licensees	(\$25,000.00)
Examinations estimated at 600	\$120,000.00
Reduced by fewer examinees	(\$20,000.00)
Total	\$225,000.00

According to RLD, there may be additional budget impact starting in FY07 if the Financial Institutions Division has to hire more examiners to monitor the licensees for compliance with the provisions of the bill. Because a reduction in the future number of licensees is likely, however, it is not known if the workload would increase for small loan regulation.

Estimated cost per examiner:	
Salary @ \$30,000 + 30% benefits	\$39,000
Office space @ 150 sf @ \$20 per sf	3,000
Per Diem @ \$275 per week times 26 weeks	7,150
Car	6,000
Estimated cost per examiner	\$55,150

SIGNIFICANT ISSUES

AOC cites that:

1) Section 57-12-10 NMSA 1978 provides that

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Practices Act [57-12-1 NMSA 1978] may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the practice.

According to the Office of the Attorney General, The regulations of the Attorney General, NMAC 12.2.10, provide for limitations on interest rates, term minimum and other loan terms consistent with the Unfair Practices Act. These regulations are effective February 15, 2006.

It is not clear how many businesses which currently make payday loans would continue to do so under the proposed provisions and therefore it is unknown how much revenues and oversight would change with the proposed amendments.

PERFORMANCE IMPLICATIONS

If more examiners are needed to monitor compliance with the bill, but funds are not appropriated, examiners currently on staff may need to also monitor compliance and RLD contents that this could affect the Financial Institutions Division's performance measure of examination turnaround in 30 days.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

RLD cites NMAC Title 12 Chapter 2 Part 10 Extension of Credit for Payday and Car Title Loans. Senate Bill 448 relates to a Rule promulgated by Attorney General to be effective 2-15-06, SB 448 and to Senate Bills 548, 475 and 636; Senate Bill 448 also relates to House Bill 409.

TECHNICAL ISSUES

RLD cites the following technical issues:

Page 28 lines 16 through 20 states: “the total principal amount of the loan, when combined with the principal amount of all of the consumer's other outstanding payday loans, exceeds one thousand dollars (\$1,000) or twenty percent of the consumer's net monthly income, whichever is less”, while
page 29 lines 7 through 10 states: “A consumer shall not have more than one payday loan outstanding at any time, nor shall a consumer have more than one payday loan outstanding with any licensee operating under a single trade name”, the sections appear to conflict

Page 31 line 18 through page 32 line 6 states the allowable charges per \$100.00, page 28

line 23 through page 29 line 6 states “Without affecting the rights of a consumer to pre-pay a payday loan at any time without additional cost or penalty, no payday loan shall have a stated minimum term of less than ninety days. A payday loan shall be repayable in equal monthly payments of principal and administrative fees. There must be a minimum of three payments, and the first payment shall come due no sooner than one month after the distribution date of the loan proceeds.” It is not clear whether the allowable charges are for the full 90 day term of the loan or monthly allowable charges.

Page 40 line 24 through page 42 line 20 requires the Division to compile a report of all licensees. The data collection components all regard payday type loans. It is not clear if the report should only include payday lenders or all lenders including installment lenders.

Page 41 lines 3 through line 7 require the Division to compile an annual report by April 1 of each year. Section 58-15-10 subsection B of the Small Loan Act (page 19 line 20) states “Each licensee shall, annually on or before March 31, file a report with the director giving such relevant information as [he] the director may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by the licensee within the state pursuant to the provisions of the New Mexico Small Loan Act of 1955.” According to RLD, the Division would not be able to meet the April 1st deadline as the Division would only have the information to compile on March 31st.

OTHER SUBSTANTIVE ISSUES

RLD contends that the rules promulgated by the Attorney General regarding Payday lending are significantly different than the bill. The Attorney General’s rule becomes effective on 2-25-06 and the provisions of the bill would become effective 10-1-06.

RLD contends that the Financial Institutions Division would need to hire surveyors to help it determine which locations would not be eligible for license renewal as per Page 36 line 13 through page 37 line 3. The bill requires that the Division not renew any small loan license where the licensee makes payday loans if the licensed location is within 1 and ½ miles of any gambling facility based on a straight line measurement from the property line of the licensee to the property line of the gambling facility. However, RLD could require that any licensee in question finance their own proof of distance from a gambling facility.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Office of the Attorney General, the regulations promulgated by the Attorney General, NMAC 12.2.10, will take effect on February 15, 2006, imposing interest rate caps, a minimum 120 day term and other limitations on payday lenders.

POSSIBLE QUESTIONS

1. What is the significance of the proposed start date of October 1 2006?
2. How are the attorney general rules different than the proposed bill?
3. How many inspectors currently oversee small loan lenders? How many businesses does each inspector typically oversee? What additional workload per inspection is expected based on the new requirements included in this bill?
4. Who is the intended entity responsible for determining the distance a payday licensee is located from gambling facilities?

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